IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 328 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIM MUSA NODE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 328 of 2001

MR YOGESH S LAKHANI for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioner-original accused has preferred this revision application before this Court challenging

the judgment and order dated 11.6.2001 recorded by the learned Addl.Sessions Judge, Gandhidham in revision application No.28/2000. It appears that the Forest Department has seized some coal and that was the subject matter before the learned Judicial Magistrate First Class, Bhachau in Forest Offence No. 8 of 1999-2000. An application was submitted on 27.3.2000 by the petitioner herein before the said Court for the interim custody of the said muddamal article. The learned Magistrate has passed the order that the muddamal coal be returned to the petitioner on his furnishing solvent surety and P.R. in a sum of Rupees One Lakh. The said order was passed on 16.6.2000 in the aforesaid offence. Feeling aggrieved by the said order of the trial court, the State had preferred revision application before the Sessions Court at Gandhidham, Kutch District being Criminal Revision Application No.28/2000. The learned Addl.Sessions Judge heard the application and allowed the same and directed that the said order of the learned Magistrate be quashed and set aside and the muddamal coal be recovered from the petitioner and be handed over by way of interim custody to the Range Forest Officer. Bhachau on condition to produce the same before the Court concerned as and when so required. Feeling aggrieved by that order of the learned Addl.Sessions Judge dated 11.6.2001, the petitioner has preferred this revision application before this Court. It has been contended that there was no reason for the learned Addl.Sessions Judge to interfere with the said order of the learned Magistrate and, therefore, the order is illegal, perverse and deserves to be set aside.

2. Rule was issued. Mr B D Desai, learned APP has appeared in response to the service of rule. I have heard Mr Y S Lakhani, learned Advocate for the petitioner and Mr B D Desai, learned APP for the State. During the course of argument it was noticed that through ignorance or inadvertence, the petitioner has already disposed of the coal in question and, therefore, the learned Advocate has submitted that the petitioner has submitted surety and P.R. in a sum of Rupees One lakh and, therefore, at the conclusion of the trial, if the muddamal article is ordered to be confiscated to the State, then the petitioner will have to deposit the said amount of Rupees One lakh before the trial court and, therefore, no order can be passed at present. During the course of hearing, it was noticed that when the order was passed for interim custody, the petitioner should not have disposed of the muddamal article entrusted to him by way of interim custody. However, the said muddamal article has totally gone out of custody of the petitioner, and therefore, it

was suggested on behalf of the State by Mr B D Desai, learned APP that the petitioner should deposit the entire amount of Rupees 1,50,000/- before the trial court because he has submitted surety and P.R. for the production of the said muddamal article before the trial court. At this stage, Mr Y S Lakhani, learned Advocate for the petitioner states that looking to the condition and position of the petitioner, it may not be possible for him to deposit the entire amount at a stretch. Therefore, an order may be passed for deposit of Rs.50,000/- before the trial court.

3. Having regard to the facts and circumstances of the case, I am of the opinion, in the fitness of things, it would be just and proper to direct the petitioner to deposit an amount of Rs.75,000/- (Rs. Seventy five thousand only) before the trial court within a span of four weeks from today. At the same time, the petitioner shall also furnish solvent surety and P.R. in a sum of Rs.25,000/- for making further deposit, if so required by the trial court on conclusion of the trial.

4. For the foregoing reasons, this Revision is partly allowed. The orders passed by the two courts below are modified to the extent that the petitioner shall deposit a sum of Rs.75,000/- before the trial court within a span of four weeks from today. On such deposit, the trial court shall invest the same in Fixed Deposit in the name of Nazir of the Court for a period of one year initially and shall be extended from time to time till the final disposal of the case before the Court concerned. The amount shall be ultimately paid in accordance with the final order of the trial court. Over and above the aforesaid payment, the petitioner shall also furnish a solvent surety and P.R. of Rs.25,000/- for due observance of the final order of the trial court for disposal of the muddamal articles if and when so ordered by the trial court at the conclusion of the trial, in view of the fact that the muddamal coal has been disposed of by the petitioner.

With these observations, this revision application is ordered to be disposed of. Rule is made absolute to the aforesaid extent only. Direct Service is permitted.

4.2.2002 [D P Buch, J.]
msp